

August 18, 2025

Tammy Miller
Technical Assistance
Florida Department of Revenue
2450 Shumard Oak Boulevard
Tallahassee, Florida 32399-0104

VIA ELECTRONIC DELIVERY
rulecomments@floridarevenue.com

Re: Written Comments in Response to FDOR 12A-1 Rule Development Workshop
conducted August 14th

Dear Ms. Miller:

Please be advised that we represent the Florida Retail Federation (“FRF”), representing over 1,500 diverse Florida businesses unified by a shared interest in retail. FRF appreciates the Department’s actions to provide guidance to dealer and the public regarding recently enacted legislation via the rule development process in chapter 120, Florida Statutes. Please find below specific comments related to the Department’s draft rule language and forms.

Sunscreen & Cosmetics with SPF

As the Department is aware, Section 46, Chapter 2025-208, Laws of Florida, created a new permanent sales tax exemption for sunscreen. *See* section 212.08(7)(eeee), Florida Statutes. The new statute provides:

Sunscreen.—Sunscreen is exempt from the tax imposed by this chapter. As used in this paragraph, the term “sunscreen” means a topical product that is primarily intended for application to the skin of a person and classified by the United States Food and Drug Administration for the purpose of absorbing, reflecting, or scattering ultraviolet radiation. The term does not include cosmetics or other products that are not primarily intended to absorb, reflect, or scatter ultraviolet radiation.

Based on the Department’s comments at the rule development workshop, to effectuate this legislative change the Department anticipates amending the Form DR-46NT by providing that taxable cosmetics include “suntan lotion (no SPF),” and exempt common household remedies include “sunscreen (with SPF).”

Due to the various types of products across the market containing a Sun Protection Factor¹ (“SPF”), FRF request the Department provide greater guidance to its members and the public at large regarding the taxability of products that could fall outside the two currently listed categories in the draft rule: suntan lotion (no SPF) and sunscreen (with SPF). If a topical cosmetic product was classified by the USFDA for the purpose of absorbing, reflecting, or scattering ultraviolet radiation (with SPF), would the product be exempt or taxable? The application of new section 212.08(7)(eeee), F.S., as provided in the draft changes to Form DR-26NT is not fully clear.

Learning Aides & Bundled Transactions

Section 45, Chapter 2025-208, Laws of Florida, codifies the annual August back-to-school sales tax holiday. Included in the holiday are learning aids having a sales price of \$30 or less and school supplies having a sales price of \$50 or less.

The Department’s proposed draft of Rule 12A-1.117(3) and (4) FAC, provide guidance on school supplies and learning aids independently. Rule 12A-1.117(6), FAC, provides guidance regarding bundled transactions for taxable and exempt items. None of these subsections provide guidance on the sale of a learning aid (interactive books, puzzle books, search-and-find books) bundled with a school supply (pens, pencils, crayons, markers). A regular example includes a handwriting book (letters, numbers, or words) with an included dry erase marker to practice. The current draft rule is unclear if the \$30 threshold or \$50 threshold would apply to such bundled transaction.

Refunds & Documentation

Rule 12A-1.117(12), FAC, provides the Department’s interpretation of the law associated with customer refunds. The subsection requires a customer “must produce a receipt or invoice” ... “when a customer returns an item purchased during the holiday period” (emphasis added.) It is unclear how retailer will know whether the item was purchased before, during, or after the holiday period. Does this provision require a retailer to request the customer produce a receipt or invoice at all times because any given purchase could have occurred “during the holiday period?” If this is the Department’s intent, it should clearly provide its position in an administrative rule. The Department should not attempt to create new policy positions tangential to the August Back-to-School Sales Tax Holiday in proposed Rule 12A-1.117, FAC.

Recreational Use of Computers

FRF recognizes that new section 212.08(20)4.a. and b. contain the following limitations:

- a. “Personal computer-related accessories” includes keyboards, mice, personal digital assistants, monitors, other peripheral devices, modems, routers, and *nonrecreational software*, regardless of whether the accessories are used in association with a personal computer base unit. The term does not include furniture or systems, devices, *software*, monitors with a television tuner, or peripherals *that are designed or intended primarily for recreational use*.

¹ See USDA - <https://www.fda.gov/about-fda/center-drug-evaluation-and-research-cder/sun-protection-factor-spf>

b. “Personal computers” includes electronic book readers, calculators, laptops, desktops, handhelds, tablets, or tower computers. The term *does not include* cellular telephones, video game consoles, digital media receivers, or devices that *are not primarily designed to process data*.

The Department’s draft Rule 12A-1.117(1)(f)3., FAC, attempts to list some types of software as “nonrecreational software.” The term “includes software such as antivirus, word processing, financial, database, and educational software.” The subparagraph also expressly provides that “gaming software” is excluded. However, the rule should provide clarity on the factual distinction between gaming and educational software, as various types of educational software include learning components which could be considered to some to be games, especially educational software targeted at school-aged youth.

Draft Rule 12A-1.117(24), FAC, lists various categories of taxable and exempt computers and computer-related accessories. FRF recommends the Department clarify the following items in the list.

- Taxable - Computers designed and intended for recreation (games and toys)

It is unclear if this item is limited to portable, handheld, or machine cabinet games and toys that include computer circuitry? Just above this item, the Department provides that “[c]omputer towers consisting of a central processing unit, random-access memory, and a storage drive” are exempt during the Holiday period. Would this include a desktop or laptop marketed as a “gaming PC,” even though such PC consists of a central processing unit, random-access memory, and a storage drive?

- Taxable - Games and gaming software

The classification of all games and gaming software to be taxable may confuse retailers and the public. Department Rule 12A-1.032, FAC, clearly provides that 1) customized software and 2) software not sold in a tangible form are not subject to Florida’s sales tax. Rule 12A-1.117(24), FAC, should be modified to provide parity with Rule 12A-1.032, FAC.

We hope this information is helpful, and we appreciate the Department’s consideration of these written comments. If you have any questions, please reach out at 850-459-0992.

Sincerely,



H. French Brown, IV

cc: Brinton Hevey (Brinton.Hevey@floridarevenue.com)